

# CONSERVATION COMMISSION



Town of Dunstable  
Dunstable Wetlands Bylaw  
511 Main Street  
Dunstable, MA 01827  
Adopted: 4-8-1985  
Last Revised: 8-30-2006

## **Dunstable Wetlands Bylaw**

<b>Purpose, Precidents, &amp; Significant Points</b>	<b>1</b>
<b>Section 1 - Application</b>	<b>2</b>
<b>Section 1A - Emergency Projects</b>	<b>2</b>
<b>Section 2 - Determination of Applicability</b>	<b>3</b>
<b>Section 3 - Notice of Intent</b>	<b>3</b>
<b>Section 4 - Public Hearing</b>	<b>4</b>
<b>Section 5 - Burden of Proof</b>	<b>4</b>
<b>Section 6 - Order of Conditions</b>	<b>5</b>
<b>Section 7 - Denial</b>	<b>5</b>
<b>Section 8 - Relationship to M.G.L. Chapter 131, Section 40</b>	<b>5</b>
<b>Section 9 - Additional Information</b>	<b>6</b>
<b>Section 10 - Entry Upon Land</b>	<b>6</b>
<b>Section 11 - Recording</b>	<b>6</b>
<b>Section 12 - Pre-Acquisition Violation</b>	<b>6</b>
<b>Section 13 - Legal Action</b>	<b>6</b>
<b>Section 14 - Regulations</b>	<b>7</b>
<b>Section 15 - Fee Schedule</b>	<b>7</b>
<b>Section 16 - Definitions</b>	<b>7</b>
<b>Section 17 - Security</b>	<b>8</b>
<b>Section 18 - Violations &amp; Enforcement</b>	<b>9</b>
<b>Section 19 - Invalidity</b>	<b>10</b>
<b>Section 20 - Appeals</b>	<b>10</b>

## AN INTRODUCTION TO THE DUNSTABLE WETLANDS BYLAW

**PURPOSE:** The purpose of the Bylaw is to allow the citizens of the Town through the office of the Dunstable Conservation Commission to have a set of locally enforceable wetlands regulations. They are to complement the wetlands regulations presently in effect under the authority of the Massachusetts Department of Environmental Quality Engineering. The DEQE regulations are subject to change without regard to the interests and needs of Dunstable, and in some ways do not presently protect local interests. A local bylaw will offer protection against erosion of environmental protection of wetland resources by any changes of the state regulations.

**PRECEDENTS:** Many communities in Massachusetts have such a local bylaw. The legality of such a bylaw has been challenged, and the constitutionality verified by the Massachusetts Supreme Judicial Court.

**SIGNIFICANT POINTS:** The bylaw has been drafted so that its application will not significantly increase the burden of paperwork beyond what is presently required of individuals by the DEQE Wetlands Protection Regulations presently in effect.

This bylaw is permissive in character. Its function is to assure that activities undertaken in or near wetlands will be carried out in such a way as to preserve the wetland resources which are a public trust.

It is to protect developed or undeveloped wetland resources including public water supply, private water supply, groundwater supply, flood control, erosion control, storm damage prevention, water pollution, fisheries, shellfish, wildlife, recreation and aesthetics.

As presently required under the DEQE Regulations, the burden of proof as to the acceptability of a proposed activity or development lies with the proponent. It is not to be the role of the Commission to conduct such studies on behalf of an applicant.

The Commission, acting upon a preponderance of credible evidence will be empowered to deny permission for activities on subject lands if in its judgment such denial is necessary to protect the interests of the Bylaw.

The Commission may make a request to the Board of Selectmen to instruct Town Counsel to take such legal action as may be necessary to restrain violations and enforce the orders of the Commission.

THE TEXT OF THE BYLAW APPEARS ON THE FOLLOWING PAGES.

### General Wetlands Bylaw

[Adopted 4-8-1985 ATM Article 9; Approved by Attorney General 7-10-1985]  
[Amendments 5-13-1991 ATM Article 32 [Enforcement]; Approved by  
Attorney General 7-17-1991; 5-11-1992 ATM Article 10 [Violations and  
Enforcement]; Approved by Attorney General 6-15-1992; 5-12-1997 ATM  
Article 24 [Section 1] ratified 10-29-1997 STM Article 4; Approved by  
Attorney General 2-17-1998; 5-8-2000 ATM Article 30 [Definitions] ATM;  
Approved by Attorney General 7-26-2000]  
5-8-2006 ATM Article 18 [Application] [Entry Upon Land];  
Approved by Attorney General 8/7/2006

**§ 1: APPLICATION [Amended 5-20-1997 ATM Article 24, ratified by 10-29-1997 STM Article 4; Amended 5-8-2006 ATM Article 18]**

The purpose of this Bylaw is to protect the wetlands of the Town of Dunstable by controlling activities deemed to have, or have the potential to have, a significant effect upon wetland values, including but not limited to the following: potential or developed public or private water supply, potential or developed groundwater supply, flood control, erosion control, storm damage prevention, water pollution, fisheries, shellfish, wildlife, recreation and aesthetics (collectively, the “interests protected by this Bylaw”).

No person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, fresh water wetland, beach, flat marsh, meadow, bog, swamp or lands bordering on any creek, river, stream, pond or lake or any land under said waters or any land subject to flooding or inundation, or within one hundred feet of the 100-year storm flow line, other than in the course of maintaining, repairing or replacing but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services, without first filing written application for a permit to so remove, fill, dredge, alter or build upon, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and receiving and complying with a permit issued by the Conservation Commission; nor shall any new permanent structure or impervious surface (greater than 100 square feet in the aggregate) be permitted within 60 feet of any freshwater wetland as defined in the Bylaw, except that the repair, replacement or enlargement of any single family dwelling house, or any appurtenant structure thereof, existing as of May 31, 1997, may be permitted within such area to the extent that such repair, replacement or enlargement does not result in a reduction in the minimum distance that existed between the previously existing structure or impervious surface and the fresh water wetland, land under water bodies and waterways, upon completion of such repair, replacement or enlargement, in all events following proceedings in

compliance with this Bylaw and the issuance of an appropriate Order of Conditions by the Conservation Commission. Notwithstanding the foregoing, new permanent structure or impervious surface, aggregating no more than one hundred square feet (over one or more projects or occasions), shall be presumed to be permissible and may, in the discretion of the Conservation Commission, upon appreciation, be authorized summarily on an administrative basis without hearing.

#### **§ 1A: EMERGENCY PROJECTS**

This Bylaw shall not apply to emergency projects as defined in General Laws Chapter 131, Section 40, which are necessary for the protection of the health or safety of the citizens of the Commonwealth and to be performed or ordered to be performed by an agency of the Commonwealth or of the Town. An emergency project may be any project certified to be an emergency by the Commission or by its authorized agent. This Bylaw shall not apply to work performed for normal maintenance or improvement of lands in agricultural use at the time of this application.

#### **§ 2: DETERMINATION OF APPLICABILITY**

Any person may request the Conservation Commission to make a determination as to whether or not this Bylaw applies to a particular area of land.

This request shall be sent by certified mail or hand delivered to the Commission or its authorized representative. If the applicant is other than the owner, the applicant shall send a copy of the request to the owner. If the applicant hand delivers the request to the Commission, the bearer shall be given a dated receipt.

The Commission shall determine, within 21 days of receipt of such request, whether this Bylaw does apply to the particular area of land. The Commission will send to the applicant a Determination of Applicability form.

The Determination of Applicability will be sent to the applicant by certified Mail. If the applicant is other than the owner, the Commission will send a copy of the Determination to the owner by certified mail.

#### **§ 3: NOTICE OF INTENT**

If the particular area of land is subject to this Bylaw, then the applicant must file a Notice of Intent. This Notice will be on a form available from the Commission. Said notice shall include plans and specifications as required of an applicant under G.L. ch.131, Section 30, as of January 1, 1985. These plans

shall clearly show the location of the wetland boundaries, and the trace of all natural or man-made watercourses of an ephemeral nature or where they are not otherwise identified as or associated with a wetland. Calculations by which it shall be possible for the Commission to evaluate the impact(s), whether actual or potential, of all relevant aspects of the proposed activity shall be included as an integral part of the filing of a Notice of Intent with the Conservation Commission.

The Notice of Intent may be filed before other permits, variances and approvals required under the Town bylaws, Subdivision Control Law or regulations, have been obtained.

The Notice of Intent shall be accompanied by a check for the amount of the filing fee (see Filing Fees). No filing fee is required when the Town of Dunstable files a Notice of Intent.

Each Notice of Intent shall be sent by certified mail or shall be hand delivered to the Conservation Commission or its authorized representative. A person delivering a Notice of Intent by hand shall be given a dated receipt.

Copies of the Notice of Intent shall be sent by the applicant, at the same time, by certified mail or hand delivered, to the Planning Board, the Board of Appeals, and the Board of Health.

Copies of the Notice of Intent shall be sent by the applicant, at the same time, by certified mail to all abutters and to the owner if other than the applicant. A list of persons so notified shall be provided to the commission prior to the Public Hearing.

#### **§ 4: PUBLIC HEARING**

The Commission shall hold a Public Hearing on the application within 21 days of the filing of the Notice of Intent. Notice of the date, time and place of the hearing shall be given by the Commission at the expense of the applicant, not less than five days prior to the hearing, by publication in a newspaper of general circulation in Dunstable and by mailing a notice to the applicant, the Board of Health, Board of Appeals and Planning Board. Such hearing may be held at the same time and place as any public hearing required to be held under G.L. ch. 131, Section 40. If the Commission determines that additional data or information is necessary, the hearing may be continued to a future date.

## **§ 5: BURDEN OF PROOF**

The applicant shall have the burden of proving by preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or at the Commission's discretion, to continue to the hearing to another date to enable the applicant or others to present additional evidence upon such terms and conditions as seems to the Commission to be reasonable.

## **§ 6: ORDER OF CONDITIONS**

If after said hearing, the Conservation Commission determines that the land on which the proposed work is to be done is significant to the interests protected by this Bylaw, it shall by written order, within 21 days or such future time as the Commission and applicant shall agree upon, impose such conditions reasonably necessary for the protection of the interests described herein and all work shall be done in accordance therewith. The Conservation Commission may impose such conditions on any proposed removing, dredging, filling or altering as it deems necessary to protect and preserve the interests covered by this Bylaw. Such Order of Conditions shall be in writing and may be subject to the same constraints as any such order issued by the Dunstable Conservation Commission under the provisions of G.L. Ch.131, section 40, or successor statutes, and shall be issued within 21 days or such further time as the Commission and applicant shall agree upon after the Public Hearing. Such Order of Conditions shall expire in no less than one nor more than three years from the date of issuance. The date of expiration shall be specified in the Order. If the project is not completed within one year, then 30 days prior to the expiration date an extension must be applied for. Such extension may be for no more than three years. No proposed work governed by an Order of Conditions shall be undertaken until all permits, approvals and variances required by the local Bylaw have been obtained and all applicable appeal periods have expired.

If the Commission determines that the area which is the subject of the application is not significant to the interests protected by this Bylaw, or that the proposed activity does not require the imposition of conditions, it shall issue a permit without conditions within 21 days of the public hearing. The applicant and all others who have received notice of such hearing by mail shall be notified of such determination within 21 days after said hearing.

## **§ 7: DENIAL**

The Commission is empowered to deny permission for any removal, dredging, filling, or altering, on subject lands within the Town, if, in its judgment such denial is necessary to protect the interest of this Bylaw.

## **§ 8: RELATIONSHIP TO M.G.L. CHAPTER 131, SECTION 40**

The Commission shall not impose additional or more stringent conditions pursuant to Chapter 131, Section 40 of the General Laws than it imposes pursuant to this Bylaw, nor shall it require a Notice of Intention pursuant to Section 40 to provide materials or data in addition to those required pursuant to this Bylaw.

## **§ 9: ADDITIONAL INFORMATION**

At any time up to the closing of the hearing, the Commission may require such additional information from the applicant as the Commission reasonably deems necessary.

## **§ 10: ENTRY UPON LAND (Amended 5-8-2006 ATM Article 18)**

The Commission, its agents, and employees may enter upon privately-owned land for the purpose of performing their duties under this Bylaw, subject to requirements or limitations of applicable law.

## **§ 11: RECORDING**

Both the original Order of Conditions and a Statement of Compliance with this order shall be recorded with the Registry of Deeds in Lowell for the property defined in the Order. Evidence certifying that recording has been done must be returned to the Commission before work begins.

## **§ 12: PRE-ACQUISITION VIOLATION**

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any permit issued pursuant to this Bylaw shall forthwith comply with any such order or restore such land to its condition prior to any violation; provided, however, that no action, civil or criminal, shall be brought against

such person unless commenced within three years following the date of acquisition of the real estate by such person.

### **§ 13: LEGAL ACTION**

The Board of Selectmen shall, upon the request of the Conservation Commission, instruct Town Counsel to take such legal action as may be necessary to restrain a violation of this Bylaw, and enforce the orders of the Commission hereunder and the Town Counsel shall forthwith comply with such instructions.

### **§ 14: REGULATIONS**

After Due notice and public hearings, the Commission may promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court or law shall not act to suspend or invalidate the effect of this Bylaw.

### **§ 15: FEE SCHEDULE**

- Rules:
- 1) Permit fees are payable at the time of application and are non-refundable.
  - 2) Permit fees shall be calculated by this Commission per schedule below.
  - 3) Town, County, State or Federal projects are exempt from fees.
  - 4) There shall be no fee for activities involving improvements undertaken to improve the agricultural use of land currently in agriculture or of land to be converted to agricultural use.
  - 5) No fee is charged for Requests of Determination under the law or for extensions for Orders of Conditions.
  - 6) Failure to comply with the law after official notification shall result in fees twice those normally assessed.
  - 7) The Commission shall have the right to change the fee schedule shown below. Any change of fee schedule must be advertised and posted at the Town Hall at least thirty days prior to the date upon which the changes are to become effective.

- Fees:
- 1) Wetlands Bylaw Hearing for a single-family residential property not involving the subdivision of land or the construction of more than one residential unit thereon...\$25.00

- 2) Wetlands Bylaw Hearing for subdivision of land to produce two or more residential building lots, or for commercial and for Industrial real estate...\$100.00

## **§ 16: DEFINITIONS [Amended 5-11-2000 ATM Article 30]**

The following definitions shall apply in the interpretation and implementation of this Bylaw:

- a) **PERSON**; the term PERSON shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town by-laws, administrative agencies, public or quasi-public, corporations or bodies, the Town of Dunstable, and any other legal entity, its legal representatives, agents or assigns.
- b) **APPLICANT**; the term APPLICANT as used in this Bylaw shall mean a person given Notice of Intention to build, remove, fill dredge or alter.
- c) **ALTER**; the term ALTER shall include, without limitation, the following actions when undertaken in areas subject to this Bylaw:
  - 1) Removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind, muck, peat or other organic soil of any description or kind;
  - 2) Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood storage retention characteristics;
  - 3) Drainage or other disturbance of the water level or water table;
  - 4) Dumping, discharging, filling with any material or other activity which may degrade surface or ground water quality in or out of the Town of Dunstable;
  - 5) Driving of piles, erection of the buildings or structures of any kind;
  - 6) Placing of obstructions whether or not they interfere with the flow of water;
  - 7) Destruction of plantlike, including the cutting of trees;
  - 8) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the surface or ground water;
- d) **BANKS**; the term BANKS shall mean that part of land adjoining any body of water or watercourse which confines the water.
- e) **MARSH, FRESHWATER WETLAND, SWAMP, WET MEADOW, BOG**; the terms MARSH, FRESHWATER WETLAND, SWAMP, WET MEADOW, BOG, as used in this Bylaw shall be defined as defined by the characterization of the presence of water on, at or below the surface of the ground during specified periods of the year, and further by the classification of the significant part of the vegetational community as specified in M.G.L. Chapter 131, Section 40.

The Commission may adopt additional definitions not inconsistent with this Section 16 of this Bylaw.

## **§ 17: SECURITY**

The Commission may require, as a permit condition in some particular cases 1.) Where the scope of the work is such that a failure to perform the work according to the conditions in the Order would be likely to cause grave damage to the interests protected by this Bylaw, or 2.) Where particular conditions in the Order must remain effective through the future to assure continuing protection of interests protected by this Bylaw; that the performance and observance of other conditions be secured by one or both of the following methods:

- a) By a bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient to secure performance of conditions and observance of the safeguards of such Order of Conditions and payable to the Town of Dunstable upon default;
- b) By a conservation restriction, easement or by a covenant, executed and duly recorded by the owner of record, running with the land, whereby the conditions and safeguards included in such Order of Conditions shall be performed before any lot may be conveyed other than by mortgage deed.

The Commission shall make specific findings of fact in support of terms and conditions imposed under this section.

## **§ 18: VIOLATIONS AND ENFORCEMENT [Amended 5-13-1991 ATM Article 32; 5-11-1992 ATM Article 10 C]**

Any person who violates or any corporate or quasi-corporate entity which violates any provision of this bylaw or any conditions of a permit or order issued pursuant to it shall be punished by a fine as listed herein below. Each day or portion thereof during which a violation continues shall constitute a separate offense.

- a) Alteration of an area subject to protection under the bylaw without having filed for and having in effect at the time of the activity a valid Order of Conditions regulating the activity undertaken. The penalty shall be three hundred (\$300.00) dollars.
- b) Failure to comply with an order or orders as set forth in any Order of Conditions in effect to regulate the activity thereby permitted within an area subject to projection under the bylaw within the time period specified within such orders. The penalty shall be two hundred (\$200.00) dollars.

- c) Failure to comply with any one or more of the terms of any enforcement Order or Orders duly issued by the Dunstable Conservation Commission within the time limits specified in such Orders. The penalty shall be fifty (\$50.00) dollars.
- d) Unauthorized removal or destruction of vegetation and or property on conservation lands, and unauthorized disturbance of wildlife by actions other than the normal and lawful use and enjoyment of such property or lands. The penalty shall be fifty (\$50.00) dollars.
- e) Failure to maintain in proper working order or condition appropriate to their intended function, structures, improvements or facilities which were required or permitted as part of activities regulated under an Order of Conditions issued to protect an area subject to regulation under the Bylaw and significant to the interests to be protected under this bylaw. The penalty shall be fifty (\$50.00) dollars.

In addition to any other means of enforcement provided for by law, the provisions of this General Wetlands Bylaw may also be enforced at the election of the Conservation Commission by non-criminal complaint pursuant to any bylaws adopted pursuant to Massachusetts General Laws, Chapter 40, Section 21D, as amended, in force in the Town of Dunstable. The enforcing authority shall be either the Dunstable Police Department, including any Police Officer in said Department, or the Conservation Commission.

#### **§ 19: INVALIDITY**

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any Order of Conditions which have previously become final.

#### **§ 20: APPEALS**

In the event that any person shall be aggrieved by a decision of the Conservation Commission under this Bylaw, or by its failure to act thereunder, such person may bring an action in the nature of certiorari under G.L. Chapter 249, Section 4.